APPEAL NO. 030210
FILED MARCH 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on January 7, 2003. The hearing officer determined that the appellant (claimant herein) sustained a compensable injury in the form of an occupational disease from repetitive trauma as of _____; that the respondent (carrier herein) did not contest the compensability of the claimant's injury within seven days of receiving written notice of the claimed injury; and that the claimant had disability from his _____, compensable injury from July 17, 2001, through June 28, 2002. The claimant appeals, contending that the hearing officer's decision that the claimant's disability ended on June 28, 2002, was against the great weight and preponderance of the evidence based upon a finding that the claimant suffered an intervening injury, which was not an issue before the hearing officer at the CCH. The claimant requests that we reverse the decision of the hearing officer and remand the case. The carrier responds that the disability determination of the hearing officer is sufficiently supported by the evidence.

DECISION

Reversed and remanded.

First, we note that the only issue before us on appeal is disability. The hearing officer's finding that the claimant sustained a compensable injury on _____, and that the carrier failed to timely dispute the injury have not been appealed and have become final pursuant to Section 410.169.

The claimant's injury was an injury to his back resulting from aggravation of a preexisting back condition. The claimant underwent spinal surgery for his injury on July 17, 2001. The claimant testified that he continued working for the employer through July 16, 2001. In September 2001 the claimant's doctor released him to restricted duty, but the employer was unable to accommodate the claimant's restrictions. The claimant went to work for another employer on September 19, 2001. The claimant testified that this new job was lighter duty and that it paid less than the job on which he suffered his compensable injury. The claimant testified that he had a recurrence of his back pain in (date of new injury). The claimant continued working for his new employer until he underwent a second spinal surgery on June 29, 2002. The claimant testified that he has been unable to work since the second surgery and that there is also medical evidence of disability after the June 29, 2002, surgery.

In his findings of fact and conclusions of law, the hearing officer determined that the claimant's disability ended on June 28, 2002. There are no underlying findings of fact explaining how this determination was reached. However, in the section of his decision labeled "Statement of the Evidence" the hearing officer provides the following rationale for his decision:

> However he did it, the Claimant sustained an aggravation of his low back condition that constituted a new injury in (date of new injury). It is not an extent of the original problem or the _____ injury. Therefore, [Dr. K] medical treatment on and after January 23, 2002 was for the new injury, not for the compensable _____ injury. Nonetheless, the Claimant worked for the other employee (sic) at a lower wage from September 2001 through June 28, 2002 as a direct result of his _____ compensable injury and the medical treatment therefor. The new (date of new injury) injury did not affect the original disability until the June 29, 2002 surgery for that low back injury.

We find this rationale flawed in a number of respects. The claimant argues that the hearing officer made a determination of intervening injury when there was no issue concerning intervening injury before the hearing officer, thus the claimant was not given an opportunity to present evidence on whether or not the claimant suffered an intervening injury. The carrier appears to argue that the issue of intervening injury is subsumed in the issue of disability. We note that clearly the law in Texas is that an intervening injury only bears on disability if the intervening injury is the sole cause of the claimant's disability. Texas Workers' Compensation Commission Appeal No. 952061, decided January 22, 1996. There was no sole cause issue in the present case and no determination by the hearing officer concerning sole cause. If the hearing officer is attempting to implicitly apply the doctrine of sole cause, it would appear he is failing to apply it properly. *See* Texas Workers' Compensation Commission Appeal No. 991654, decided September 15, 1999; Appeal No. 952061, *supra*; Texas Workers' Compensation Commission Appeal No. 992587, decided December 30, 1999; and Texas Workers' Compensation Commission Appeal No. 94844, decided August 15, 1994. We are also concerned about the statement by the hearing officer that the claimant's medical treatment after January 23, 2002, was not related to his compensable injury. Determination of medical benefits is obviously far outside of the purview of the hearing officer in this case. If the hearing officer is attempting to somehow explain his disability finding by referencing the medical treatment, he still is running afoul of the doctrine of sole cause.

In light of the confusion concerning whether or not the hearing officer has restricted his decision to the issue before him or applied the correct legal standard, we must reverse his decision and remand the case to the hearing officer to resolve the issue of disability applying the proper legal standards, which are set out in the cases cited in our decision. If on remand the hearing officer persists in finding that the claimant's disability ended on June 28, 2002, the hearing officer would need to make detailed factual findings showing what evidence in the record supports such finding to facilitate our review of his decision on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new

decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

The carrier represented at the hearing that its true corporate name is **LIBERTY MUTUAL FIRE INSURANCE** and the name and address of its registered agent for service of process is:

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Edward Vilano
Appeals Judge